

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.
04-10232NMG

JAMES KEHOE,)
Plaintiff,)
v.)
MI-JACK PRODUCTS, INC.,)
FANTUZZI REGGIANE, AND)
FANTUZZI USA, INC.)
Defendants.)

)

DEFENDANT'S, FANTUZZI USA, INC.,
ANSWER TO PLAINTIFF'S AMENDED COMPLAINT

Defendant, Fantuzzi USA, Inc. ("Defendant"), hereby makes this its answer to the Plaintiff's, James Kehoe ("Plaintiff"), Complaint, as follows:

FIRST DEFENSE

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the Plaintiff to prove the same.

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the Plaintiff to prove the same.

3.-11. The Defendant states that these paragraphs are not directed to it and, therefore, no answer is necessary; however, to the extent a response is required, the Defendant denies the allegations contained in this paragraph

WHEREFORE, Defendant demands that the Plaintiff's Complaint be dismissed and that judgment enter in favor of Defendant together with its costs, interest and reasonable attorneys' fees.

COUNT II

12. Defendant repeats and incorporates herein by reference its answers to paragraphs 1 through 11 and makes them its answer to this paragraph.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the Plaintiff to prove the same.

14. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the Plaintiff to prove the same.

15. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the Plaintiff to prove the same.

16.- 24.The Defendant states that these paragraphs are not directed to it and, therefore, no answer is necessary; however, to the extent a response is required, the Defendant denies the allegations contained in this paragraph.

WHEREFORE, Defendant demands that the Plaintiff's Complaint be dismissed and that judgment enter in favor of Defendant together with its costs, interest and reasonable attorneys' fees.

COUNT III

25. Defendant repeats and incorporates herein by reference its answers to paragraphs 1 through 24 and makes them its answer to this paragraph.
26. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the Plaintiff to prove the same.
27. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the Plaintiff to prove the same.

28.-36. The Defendant states that these paragraphs are not directed to it and, therefore, no answer is necessary; however, to the extent a response is required, the Defendant denies the allegations contained in this paragraph.

WHEREFORE, Defendant demands that the Plaintiff's Complaint be dismissed and that judgment enter in favor of Defendant together with its costs, interest and reasonable attorneys' fees.

COUNT IV

37. Defendant repeats and incorporates herein by reference its answers to paragraphs 1 through 36 and makes them its answer to this paragraph.

38. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the Plaintiff to prove the same.

39. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the Plaintiff to prove the same.

40.-49. The Defendant states that these paragraphs are not directed to it and, therefore, no answer is necessary; however, to the extent a response is required, the Defendant denies the allegations contained in this paragraph.

WHEREFORE, Defendant demands that the Plaintiff's Complaint be dismissed and that judgment enter in favor of Defendant together with its costs, interest and reasonable attorneys' fees.

COUNT V

50. Defendant repeats and incorporates herein by reference its answers to paragraphs 1 through 49 and makes them its answer to this paragraph.

51. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the Plaintiff to prove the same.

52. Defendant states that this paragraph is a legal conclusion for which no answer is necessary; however, to the extent a response is required, the Defendant denies the allegations contained in this paragraph.

53. Defendant denies the allegations set forth in this paragraph.

54. Defendant denies the allegations set forth in this paragraph.

55. Defendant denies the allegations set forth in this paragraph.

56. Defendant denies the allegations set forth in this paragraph.

57. Defendant denies the allegations set forth in this paragraph.

58. Defendant denies the allegations set forth in this paragraph.

59. Defendant denies the allegations set forth in this paragraph.

60. Defendant denies the allegations set forth in this paragraph.

61. Defendant denies the allegations set forth in this paragraph.

WHEREFORE, Defendant demands that the Plaintiff's Complaint be dismissed and that judgment enter in favor of Defendant together with its costs, interest and reasonable attorneys' fees.

COUNT VI

62. Defendant repeats and incorporates herein by reference its answers to paragraphs 1 through 61 and makes them its answer to this paragraph.

63. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the Plaintiff to prove the same.

64. Defendant denies the allegations set forth in this paragraph.
65. Defendant states that this paragraph is a legal conclusion for which no answer is necessary; however, to the extent a response is required, the Defendant denies the allegations contained in this paragraph.
66. Defendant denies the allegations set forth in this paragraph.
67. Defendant denies the allegations set forth in this paragraph.
68. Defendant denies the allegations set forth in this paragraph.
69. Defendant denies the allegations set forth in this paragraph.
70. Defendant denies the allegations set forth in this paragraph.
71. Defendant denies the allegations set forth in this paragraph.
72. Defendant denies the allegations set forth in this paragraph.
73. Defendant denies the allegations set forth in this paragraph.
74. Defendant denies the allegations set forth in this paragraph.

WHEREFORE, Defendant demands that the Plaintiff's Complaint be dismissed and that judgment enter in favor of Defendant together with its costs, interest and reasonable attorneys' fees

SECOND DEFENSE

FIRST AFFIRMATIVE DEFENSE

And further answering, Defendant states that the Complaint should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

And further answering, the Defendant states that the acts complained of were not committed by a person for whose conduct the Defendant is legally responsible.

THIRD AFFIRMATIVE DEFENSE

And further answering, the Defendant states that to the extent it had any obligations to the Plaintiff, such obligations have been fully, completely and properly performed in every respect.

FOURTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that the Plaintiff's claims are barred by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that if the Plaintiff proves that the Defendant was negligent as alleged, the Plaintiff was negligent to a greater degree than the Defendants, and therefore the Plaintiff is barred from recovery under the Comparative Negligence Law of the Commonwealth of Massachusetts.

SIXTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that the Plaintiff's claims are barred by the doctrine of waiver.

SEVENTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that the Plaintiff's claims are barred by the doctrine of estoppel.

EIGHTH AFFIRMATIVE DEFENSE

And further answering, the Plaintiff's claims are barred or reduced because their damages, if any, were caused or contributed by his own comparative fault.

NINTH AFFIRMATIVE DEFENSE

And further answering, the Plaintiff failed to mitigate his damages and, therefore, the Plaintiff is not entitled to recovery for the damages claimed in the Complaint.

TENTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that it has performed and fulfilled all promises and obligations arising under all applicable warranties and therefore, the Plaintiff is barred from recovery against the Defendant.

ELEVENTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that to the extent the Plaintiff's claims resulted from modifications and/or alterations made by other persons or entities, the claims in this action must fail against the Defendant.

TWELFTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that to the extent the Plaintiff's claims resulted from the improper use and/or misuse of products, these claims are barred against the Defendant.

THIRTEENTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that to the extent the Plaintiff's claims resulted from overloading, contrary to the recommendations of the manufacturer, these claims are barred against the Defendant.

FOURTEENTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that the Plaintiff failed to provide proper notice as required by law and the Defendant was prejudiced thereby.

FIFTEENTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that the Plaintiff's claims for breach of warranty fail as a matter of law to the extent the Defendant properly disclaimed such warranties in accordance with the pertinent provisions of the uniform commercial code, M.G.L. c. 106, § 2-316.

SIXTEENTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that the Plaintiff's claims for breach of warranty fail as a matter of law to the extent the Defendant properly limited liability in accordance with the pertinent provisions of the uniform commercial code, M.G.L. c. 106, § 2-719.

SEVENTEENTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that the Plaintiff is barred from recovery against the Defendants to the extent the Plaintiff was not in privity of contract with the Defendants with regard to the subject commercial product at issue.

EIGHTEENTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that the Plaintiff was not a third-party beneficiary with regard to any applicable warranties, and therefore, the Plaintiff cannot recover in this action against the Defendant.

NINETEENTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that the Plaintiff's claims should be dismissed for misnomer of a party.

JURY CLAIM

THE DEFENDANT HEREBY DEMANDS A TRIAL BY JURY ON ALL ISSUES.

Respectfully submitted,

The Defendant,
Fantuzzi USA, Inc.,
By their attorneys,
ORIGINAL SIGNATURE ON FILE

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Christopher W. Costello. BBO# 645936
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CERTIFICATE OF SERVICE

I, Mark B. Lavoie, Esq., hereby certify that on July 20, 2004, I served a copy of the foregoing Answer to the Plaintiff's Complaint by mailing, postage prepaid,, to the following: John P. LeGrand, Esq., John P. LeGrand & Associates, P.C., 375 Broadway, Suite 2, Somerville, MA 02145 and James P. Donohue, Jr., Sloane & Walsh, 3 Center Plaza, Boston, MA 02108.

Mark B. Lavoie, Esq.